

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

WILLIAM FOO-PIO YING
CPA Certificate No. 29678

Case No. AC-2009-12
OAH NO. L-2010010245

Respondent

ORDER DENYING RECONSIDERATION

On May 6, 2010, Administrative Law Judge H. Stuart Waxman, State of California Office of Administrative Hearings, heard this matter in Los Angeles, California. Kevin J. Rigley, Deputy Attorney General, represented complainant Patti Bowers, Executive Officer of the California Board of Accountancy (CBA). Respondent represented himself.

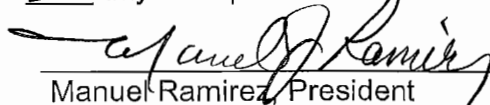
The matter was submitted on May 6, 2010. Administrative Law Judge H. Stuart Waxman issued his Proposed Decision on May 13, 2010. The California Board of Accountancy adopted the Proposed Decision and issued its Decision and Order on August 4, 2010, with an effective date of September 4, 2010.

On September 1, 2010, William Foo-Pio Ying, filed a Petition for Reconsideration of the Decision and Order. On September 3, 2010, the CBA issued an Order of Stay of Execution of Decision until September 14, 2010, in order to permit the CBA to decide whether to order reconsideration.

ORDER

The CBA hereby issues this Order denying the Petition for Reconsideration, and the Decision and Order of the CBA issued on August 4, 2010, is imposed, effective September 14, 2010.

IT IS SO ORDERED this 20 day of September 2010.



Manuel Ramirez, President
For The CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

WILLIAM FOO-PIO YING

CPA Certificate No. 29678

Respondent

Case No. AC-2009-12
OAH NO. 2010010245

ORDER OF STAY OF EXECUTION OF DECISION

Pursuant to Section 11521 of the Government Code, the Decision adopted by the California Board of Accountancy in the above-entitled matter is hereby stayed for ten (10) days until September 14, 2010 solely for the purpose to permit the Board to decide whether to order reconsideration.

IT IS SO ORDERED this 3rd day of September 2010.



Patti Bowers, Executive Officer

For The CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

WILLIAM F. YING

Certified Public Accountant Certificate
No. 29678,

Respondent.

Case No.: AC 2009 12

OAH No.: 2010010245

DECISION

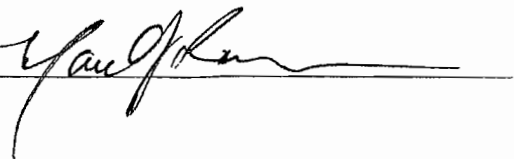
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Accountancy Board as its Decision in the above-entitled matter.

This Decision shall become effective 9-4-10.

IT IS SO ORDERED 8-4-10.

BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

By



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**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

WILLIAM F. YING

**Certified Public Accountant Certificate
No. 29678**

Respondent.

Case No. AC 2009 12

OAH No. 2010010245

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on May 6, 2010.

Patti Bowers (Complainant) was represented by Kevin J. Rigley, Deputy Attorney General.

William F. Ying (Respondent) represented himself.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. Complainant filed the Accusation in her official capacity as Executive Officer of the California Board of Accountancy, California Department of Consumer Affairs (Board).

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2. On April 25, 1980, the Board issued to Respondent Certified Public Accountant (CPA) Certificate No. 29678. The certificate will expire on June 30, 2010, unless renewed. Respondent has a history of allowing his license to expire for failure to pay the renewal fee, and failure to submit a declaration of compliance with continuing education requirements. The periods of expiration are July 1, 1998 through September 29, 1998, July 1, 2000 through January 20, 2003, and July 1, 2006 through October 9, 2007. The latter two expiration periods occurred during the time relevant to this matter.

3. On April 13, 2007, the Office of Professional Responsibility, Department of the Treasury, Internal Revenue Service, filed a complaint against Respondent with the Division of Judges of the National Labor Relations Board, seeking to disbar Respondent from practice before the Internal Revenue Service (IRS). The complaint was based on Respondent's failure to file his federal income tax returns for the years 2001 through 2005.

4. The action was settled by Respondent's consenting to an indefinite suspension from practice before the IRS with a right to petition for reinstatement after 24 months. The suspension became effective on October 9, 2007. The complaint was dismissed on October 2, 2007.

5. Respondent failed to notify the Board, in writing, of his suspension from practice before the IRS. He was unaware of his obligation to do so.

6. Although he failed to file personal income tax returns for five consecutive years, Respondent did have income taxes withheld, and he paid estimated taxes on a periodic basis.

7. On April 2, 2007, Respondent filed his personal income tax returns for 2001 through 2005.

8. At the time he consented to the IRS suspension, Respondent believed he was consenting to a two-year suspension because that was the term on the consent form he signed. However, the final paperwork reflected an indefinite suspension with a right to petition for reinstatement after two years. Because his employees were licensed to practice before the IRS, he believed he could maintain his accountancy practice even under the new terms and therefore agreed to them. He now regrets his decision to settle the case because the statutory provision alleged against him accused him of "despicable conduct." Respondent does not believe he is guilty of despicable conduct because (1) his taxes were paid on time through withholding and payment of estimated taxes; (2) only the filing of his returns was tardy, not his payment of taxes; and (3) at the time he filed his income tax returns in April of 2007, he owed only slightly more than he had already paid.

9. Despite his procrastination in filing his own tax returns, Respondent ensured timely filing of his clients' returns.

10. Respondent attributed his failure to file his income tax returns for 2001 through 2005 to two causes:

a. Respondent suffered an extremely traumatic event. His mentally ill sister, his only sibling, killed their mother, Respondent's only surviving parent. On a date not disclosed by the evidence but, by inference, sometime in the 1990's, Respondent's sister was convicted of voluntary manslaughter. She was sentenced to prison for 11 years, and then to a hospital for the mentally ill. She died in 2007.

b. During the relative time period, Respondent suffered from depression and adult attention deficit disorder (ADD). One of the symptoms of that disorder is chronic procrastination.

11. Respondent underwent psychiatric treatment "on and off" (Respondent's term) between 1994 and 2007, with limited success. He did not respond to medication for ADD, and psychotherapy did not ameliorate his depression. He ultimately decided that one must simply "be strong and face up to what you have to do." (Respondent's testimony.) Respondent presently considers himself to be "high functioning" but sometimes "acts out" against himself. When he does so, he attempts to modify his inability to focus for long periods of time by focusing for only a short time. He finds his task to be easier once he gets started.

12. Respondent admits his culpability in failing to file his income tax returns, but he felt overwhelmed during the relevant time period. Now that he has filed the delinquent returns, he finds it easy to continue to make timely filings.

13. Despite feeling overwhelmed during the relevant time period, Respondent was able to function effectively as a CPA for his clients, as a good employer for his three employees, and as a good father to his two sons, presently aged 22 and 27.

14. Respondent has suffered as a result of his IRS suspension. For example, his biggest client, who was responsible for 30 percent of his billings, lost confidence in him and terminated their business relationship.

15. Respondent is proud to be a CPA. He accepts responsibility for his actions. He is now eligible to apply for reinstatement with the IRS, but is awaiting the outcome of the instant action before doing so.

16. The Board incurred costs, including attorney's fees, in the total sum of \$5,976.25, in connection with the prosecution of this action. Those costs are deemed just and reasonable.

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LEGAL CONCLUSIONS

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to discipline Respondent's certified public accountant certificate pursuant to Business and Professions Code¹ section 5100, subdivision (h), for suspension before another governmental agency, as set forth in Findings 3 and 4.

2. Cause exists to discipline Respondent's certified public accountant certificate pursuant to Business and Professions Code section 5100, subdivision (g), for willful violation of section 5063, subdivision (a)(3), by failing to notify the Board, in writing, of his suspension from practice before another governmental agency, as set forth in Findings 3, 4 and 5.

3. Cause exists to order Respondent to pay the costs claimed under section 5107, as set forth in Finding 16.

4. Business and Professions Code section 5100, states in relevant part:

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

[¶] ... [¶]

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

(h) Suspension or revocation of the right to practice before any governmental body or agency.

5. Respondent argued that (1) his certificate should not be placed on probation because his failure to file tax returns was not "despicable conduct" in that he had already paid the majority of his tax liabilities; and (2) his failure to notify the Board of his IRS suspension was not "willful" because he was unaware that he was required to do so.

¹ All statutory references are to the Business and Professions Code unless otherwise indicated.

6. Respondent is being disciplined not because he failed to file his income tax returns for five consecutive years, but because he was suspended from practice before the IRS, another governmental agency. His failure to file the income tax returns constitutes the grounds for the IRS action, and, because Respondent is a CPA, is viewed as a factor in aggravation in this case. Respondent's certificate will not be revoked outright because his failure to file his tax returns was related to an extraordinarily traumatic event in his life, in addition to his suffering from depression and adult attention deficit disorder, all of which constitute mitigating factors.

7. The purpose of an administrative action such as this one is to protect the public, and not to punish the licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Such actions protect the public not only to licensees who intentionally do harm, but those who are unknowledgeable or negligent. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518.)

8. Respondent offered little to assure the Board that the events that led to his IRS suspension will not recur, other than his finding it easy to continue with timely filings now that he has filed his 2001-2005 tax returns, and his self-imposed behavior modifications consisting of short-term focus on a task when he is unable to focus for long periods of time.

9. Respondent failed to file his income tax returns for five consecutive years. Only three years have passed since he filed them. In light of the circumstances leading to the IRS suspension, that is an insufficient period of time to establish a lasting pattern of timely filings. Additionally, insufficient time has passed to establish the efficacy of Respondent's self-treatment for ADD, and the effect of his depression on his future conduct has not been adequately addressed.

10. Business and Professions Code section 5063 states in relevant part:

(a) A licensee shall report to the board in writing of the occurrence of any of the following events occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of these events:

[¶] ... [¶]

(3) The cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency.

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11. The term "willful" is not defined in the Business and Professions Code. However, in the absence of a definition of a term within a code, the definition in Penal Code section 7 may be used. (*Brown v. State Department of Health* (1978) 86 Cal.App.3d 548, 554.) Penal Code section 7 states in pertinent part:

1. The word "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

12. Willful conduct is not synonymous with an intent to deceive. Respondent did not intend to deceive the board when he failed to timely notify it of his IRS suspension. However, in failing to timely notify the Board, he acted willfully, as defined by Penal Code section 7.

13. In light of all the evidence, the public safety, welfare and interest cannot be adequately protected absent some oversight by the Board of Respondent's conduct and practice. Therefore, a period of probation is warranted in this case. In addition, an ethics course will serve to instill in Respondent a better understanding of his obligations as a licensed CPA.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Certified Public Accountant Certificate No. 29678, issued to Respondent, William F. Ying, is revoked pursuant to Legal Conclusions 1 and 2, separately and for both of them. However, the revocation is stayed and Respondent is placed on probation for five years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

2. Cost Reimbursement

Respondent shall reimburse the Board \$5,976.25 for its prosecution costs. The payment shall be made in quarterly payments due with the quarterly written reports referenced in Condition 3, below, the final payment being due one year before probation is scheduled to terminate.

3. Submit Written Reports

Respondent shall submit, within 10 days of completion of each quarter, written reports to the Board on a form obtained from the Board. Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

4. Personal Appearances

Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.

5. Comply With Probation

Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of Respondent's compliance with probation terms and conditions.

6. Practice Investigation

Respondent shall be subject to, and shall permit, a practice investigation of Respondent's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.

7. Comply With Citations

Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

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8. Ethics Course/Examination

Respondent shall take and pass with a score of 90 percent or better a Board approved ethics examination. If he fails to pass the examination within the time period provided or within two attempts, Respondent shall so notify the Board and shall cease practice until he takes and successfully passes the exam, has submitted proof of same to the Board, and has been notified by the Board that he may resume practice. Failure to pass the required examination no later than 100 days prior to the termination of probation shall constitute a violation of probation. Notwithstanding any other provision of this probation, failure to take and pass this examination within five years of the effective date of this order constitutes a separate cause for discipline of Respondent's license.

9. Tolling of Probation for Out-of-State Residence/Practice

In the event Respondent should leave California to reside or practice outside this state, Respondent must notify the Board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to the reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports and reimburse the Board costs, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the Board.

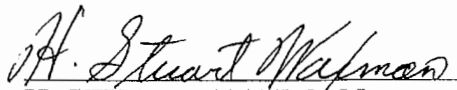
10. Violation of Probation

If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

11. Completion of Probation

Upon successful completion of probation, Respondent's license will be fully restored.

DATED: May 13, 2010


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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7 Attorneys for Complainant

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC 2009 12

12 WILLIAM F. YING
888 S. Figueroa Street, Suite 1990
13 Los Angeles, CA 90017-5468

A C C U S A T I O N

14 Certified Public Accountant Certificate
No. 29678

15 Respondent.
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17 Complainant alleges:

18 **PARTIES**

19 1. Patti Bowers (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the California Board of Accountancy, Department of
21 Consumer Affairs.

22 2. On or about April 25, 1980, the California Board of Accountancy (Board)
23 issued Certified Public Accountant Certificate No. 29678 to William F. Ying (Respondent). The
24 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
25 charges brought herein and will expire on June 30, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 5063 states, in pertinent part:

“(a) A licensee shall report to the board in writing of the occurrence of any of the following events occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of these events:

....

(3) The cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency.”

5. Section 5100 states, in pertinent part:

“After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

....

“(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

“(h) Suspension or revocation of the right to practice before any governmental body or agency.”

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1 **COST RECOVERY**

2 6. Section 5107, subdivision (a) states:

3 "The executive officer of the board may request the administrative law judge, as
4 part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or
5 certificate found to have committed a violation or violations of this chapter to pay to the board all
6 reasonable costs of investigation and prosecution of the case, including, but not limited to,
7 attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Suspension or Revocation Before Any Governmental Agency)**

10 7. Respondent is subject to disciplinary action under section 5100,
11 subdivision (h), in that on or about October 9, 2007, Respondent violated the Accountancy Act
12 when his right to practice as a certified public accountant before the Internal Revenue Service
13 (IRS) was suspended for an indefinite period.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Failure to Report to the Board in Writing of Suspension)**

16 8. Respondent is subject to disciplinary action under section 5100,
17 subdivision (g), in that Respondent willfully violated section 5063, subdivision (a)(3) after he
18 failed to notify the Board in writing within 30 days (by November 9, 2007) that his right to
19 practice as a certified public accountant before the Internal Revenue Service (IRS) had been
20 suspended on October 9, 2007 for an indefinite period.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein
23 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

24 1. Revoking or suspending or otherwise imposing discipline upon Certified
25 Public Accountant Certificate No. 29678, issued to Respondent;

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- 1 2. Ordering Respondent to pay the Board the reasonable costs of the
2 investigation and enforcement of this case, pursuant to section 5107; and
3 3. Taking such other and further action as deemed necessary and proper.
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5 DATED: July 30, 2009
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8 PATTI BOWERS
9 Executive Officer
10 California Board of Accountancy
11 Department of Consumer Affairs
12 State of California
13 Complainant
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